PROJEK LEBUHRAYA UTARA-SELATAN BHD

v

MAZURA HASSAN

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[ORIGINATING MOTION NO: R1-25-138-2002]
23 DECEMBER 2003

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Industrial Court - Ruling that dismissal was without just cause or excuse - Whether ruling unjustified - Whether had erred in law - Whether certiorari to issue*

The respondent, a toll teller at the applicant's Toll Plaza, was found to have failed to transact three transit tickets totaling RM18.30 and was dismissed from service as a result. The Industrial Court, whilst acknowledging the respondent's misconduct, ruled nonetheless that a dismissal was not warranted in the circumstances and so awarded the respondent backwages and compensation amounting to RM11,503.80 for unfair dismissal. Dissatisfied, the applicant applied for an order of *certiorari* to quash the award.

Held (allowing the application):

[1] The Industrial Court had erred in law in substituting the punishment of dismissal imposed by the applicant. There were overwhelming evidence that suggested that the dismissal was with just cause or excuse. (p 667 b-c)

[2] The learned chairman was speculating when he stated that the misconduct of the respondent was more of a mistake that 'resulted from pressure of work'. This issue was not even pleaded and the chairman was wrong in considering such unpleaded matter. (p 666 e)

[3] The learned chairman had failed to consider the nature of the applicant's business or the fact that the applicant, who was employing some 15,000 toll tellers, could not afford to compromise on the standard of honesty and integrity required of its workers. This apart, the award of RM11,503.80 was excessive and would give the impression that the respondent had benefited from her misconduct. (p 666 f)

Case(s) referred to:
Projek Lebuhraya Utara-Selatan Bhd v. Mazura Hassan [2003] 3 ILR 166 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(1)

For the applicant - TM Varughese; T/n TM Varughese & Co
For the respondent - V Malini; T/n P Kuppusamy & Co

Reported by WA Sharif

JUDGMENT

Raus Sharif J:

This is an application by the applicant for an order of *certiorari* to quash the decision of the Industrial Court in Award No. 540 of 2000 dated 10 October, 2000. The Industrial Court held that the dismissal of the respondent was without just cause or excuse and accordingly made the following orders:

(i) the applicant to pay the respondent back-wages amounting to RM9,760.80;

(ii) the applicant to pay the respondent compensation in lieu of reinstatement amounting to RM1,743; and

(iii) the total amount of RM11,503.80 be paid to the respondent through the Malaysian Trade Union Congress within 30 days of the Award subject to income tax and EPF and other contributions if any.

The factual background giving rise to this application are as follows:

The respondent joined the service of the applicant on 25 June 1997 as a Toll Teller at the Plaza Tol, Seremban. As a Toll Teller, the respondent's duty was to collect toll from highway users. On 28 June 1998 a spot check was conducted on the respondent's toll collection by Encik Nor Azman Mohd Said (COW3). It was found that she had not transacted three transit tickets totaling RM18.30.

On 8 October, 1998, the applicant issued a show cause letter, in which the respondent was charged as follows:

> Kami telah menerima laporan bahawa anda ketika bertugas pada 28th Jun, 1998 di lorong K 02 dari jam 1400 hingga jam 2200 (Giliran B) telah gagal melakukan transaksi tikit-tikit tol seperti berikut:

Kelas	Plaza Masuk	Kadar Tol (RM)	Jumlah Tikit Transit Yang Tidak di Transaksikan	Jumlah Nilai Tol (RM)
1	Bangi	3.60	1	3.60
1	Ebor North	6.90	1	6.90
1	Subang	7.80	1	7.80
		Jumlah	3	18.30

Oleh itu anda dituduh pada tarikh, masa dan lorong seperti di atas telah gagal mematuhi prosidur operasi tol dan arahan kerja dengan tidak melakukan transaksi untuk tiga tikit-tikit transit yang bernilai RM18.30.

The respondent replied in her own handwriting dated 11 October 1998 that the three tickets were faulty and she did not separate them as she is supposed to.

The respondent was subsequently found guilty of the charge and was dismissed by the applicant vide letter dated 23 October 1998.

The respondent, being aggrieved by the decision of the applicant, made representations to the Director General of Industrial Relations under s. 20(1) of the Industrial Relations Act 1967 (the Act) that she had been dismissed without just cause or excuse. As the parties were unable to resolve the dispute, the Honourable Minister of Human Resources referred the respondent's representation to the Industrial Court for an award. The Industrial Court found as fact that the respondent did commit the misconduct as alleged in the show cause letter. The Industrial Court held as follows:

After considering the totality of the evidence and the submissions, the Court finds that even though the claimant's claims in evidence that she had neither pleaded guilty to the charge nor admitted any guilt in COE10, a perusal of COE10 in its entirety discloses an explanation by the claimant more consistent with an admission to the charge than otherwise. This court accepts the company's evidence and therefore finds the claimant did fail to comply with toll operation procedure and directives by failing to transact three transit toll tickets on 28 June 1998. As such this court find the claimant did commit the misconduct alleged in the Show Cause Letter (COE6) for which she was dismissed on 23 October 1998.

Although the Industrial Court found as a fact that the respondent did commit the said misconduct, it held that the punishment of dismissal was not warranted

in the circumstances of the case and awarded the respondent the sum of RM11,503.80 as back-wages and compensation *in lieu* of reinstatement. The Industrial Court gave the reasons as follows:

> In the instant case, the claimant's misconduct was more of a mistake, which was her first, her only and her last. There was no evidence led by the company that she was guilty of continually repetitive misconduct. If she had been dishonest and had destroyed the toll tickets, instead of putting them together with the rest of transacted tickets, her misconduct would have gone undetected during spot-check. In cross-examination she stated that she did not separate the 3 untransacted transit tickets from the transacted ones because she did not have the time to do so. She also adds that she may have forgotten to do so. This, this court observes, points to the inevitable conclusion that her mistake resulted more than pressure of work for which a warning, possibly coupled with a deduction of RM18.30 from her wages, would in all good conscience have been adequate, fair and equable.

I am of the view that the learned chairman in arriving at his conclusion, as he did, committed several errors of law in that:

(1) The learned chairman was speculating when he stated that the misconduct of the respondent was more of a mistake 'resulted more from pressure of work'. This issue was not even pleaded by the respondent in her statement of case. Clearly the learned chairman erred when he chose to consider matters not pleaded in the pleadings.

(2) The learned chairman failed to consider the nature of the applicant's business. From the facts, the applicant employed about 15,000 toll tellers who are engaged round the clock in shift to collect toll from highway users. They are dealing with the collection of cash at toll booths. In order to maintain the highest degree of honesty and integrity among the toll tellers and to protect the applicant's interest, the applicant has adopted written rules and regulations and provides daily briefing sessions, to be strictly followed by the toll tellers in carrying out their duty. On 27 June 1998, the respondent was found not to transact (ie, failed to key in to the system) 3 transit toll tickets which she collected from the users of the highway for the value of RM18.30. If she had infact transacted the said three tickets the day's total collection would have been increased by RM18.30. Thus, as the result, the applicant incurred losses. No doubt the amount involved may appear to be small, by any standard, but the applicant cannot afford to compromise on the standard of honesty and integrity required of its workers. To compromise the said standard would indeed invite disaster for the company. This, the Industrial Court had failed to take into account.

(3) The respondent had only worked for the applicant for about 16 months. But the Industrial Court awarded her 14 months of remuneration of RM11,503. To me, this was manifestly excessive and far too severe a punishment upon the applicant especially after the Industrial Court had found the respondent had committed the misconduct. It appears to me, the respondent had benefited resulting from her misconduct.

In conclusion, I am of the view that the Industrial Court erred in law in substituting the punishment of dismissal imposed by the applicant. To me, there are overwhelming evidence to support the dismissal of the respondent was with just cause or excuse. On the other hand, there is no evidence of mala fide in the dismissal. There is also no evidence of victimization or unfair labour practice on the part of the applicant. In this case the respondent was caught in the act for not complying with the toll operation procedure and directives, which she was fully aware and that non-compliance of such instructions would lead to a dismissal. Any reasonable employer would have acted in the circumstances as done by the applicant. Thus, the Industrial Court's conclusion, in light of the evidence, is erroneous in law, unreasonable and devoid of any plausible justification. Accordingly, I am of the view that this is a fit case where the award of the Industrial Court can be set aside.

Accordingly, I allowed the applicant's application with costs.